

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION

Milwaukee, Wisconsin

**HARTFORD MANUFACTURING
COMPANY, INC.¹**

Employer

and

Case 30-RC-6493

**INTERNATIONAL UNION OF INDUSTRIAL
AND INDEPENDENT WORKERS**

Petitioner

and

EMPLOYEE COMMITTEE

Intervenor

DECISION AND DIRECTION OF ELECTION²

This is my determination as to whether or not the Petitioner's representation petition is barred under the Board's contract-bar doctrine. The Employer and the Intervenor assert that the petition is barred because the Employer and the Intervenor had a four-month extension to their prior three-year contract in place when the Petitioner filed the petition. The Petitioner maintains that the extension is not sufficient to act as a bar under the contract-bar doctrine. I agree with the Petitioner. I therefore conclude that a contract bar is not appropriate in this instance, and an election by secret ballot shall be conducted among the petitioned-for employees.³

¹ The name of the Employer appears as amended at hearing.

² Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

³ The Employer and Petitioner filed post-hearing briefs that were carefully considered. The hearing officer's rulings made at the hearing were free from prejudicial error and are affirmed. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case. The Petitioner, a labor organization within the meaning of Section 2(5) of the Act, claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:⁴

All full-time and regular part-time production, maintenance, quality control, and truck driver employees employed by the Employer at its Slinger, Wisconsin and Hartford, Wisconsin facilities; excluding office personnel, office clerks, temporary agency employees, sales employees, guards and supervisors as defined in the Act.

ISSUE

Under the Board's contract-bar doctrine, does the contract extension entered into between the Employer and the Intervenor act as a bar to the election petitioned-for by the Petitioner?

FACTS

The material facts are not disputed. The Employer is a manufacturer of cast iron cylinder liners, sleeves and pistons. Since 1999, the employees of the Employer have been represented by the Intervenor and have worked under a contract covering a period from June 30, 1999 until July 1, 2002. From May 14, 2002 until late June,⁵ the Employer and the Intervenor met to negotiate a new contract. After reaching agreement on many items, the parties decided that, due to a slowdown in work orders, negotiations over wages would be held at the end of October. Rather than complete negotiations for a new contract, the Employer and the Intervenor signed an agreement on June 27 to extend the existing contract until October 31.

On September 27, the Petitioner filed a petition with the Board seeking to represent the production, maintenance, quality control and truck driver employees of the Employer at its Slinger, Wisconsin and Hartford, Wisconsin facilities. That same day, the Employer sent a letter to employees announcing that it and the Intervenor would resume negotiations for a new contract

⁴ The unit description of the petitioned-for employees appears as amended at hearing and was agreed to as appropriate by all the parties.

⁵ All subsequent dates are 2002 unless otherwise noted.

on October 1. The Employer and the Intervenor reached an agreement soon thereafter, and a new contract was ratified, though not signed, on October 3. The new contract is to take effect on October 31, though the increase in wages was implemented upon ratification.

DISCUSSION AND DETERMINATION

The Employer asserts that the election sought by the Petitioner should be barred under the Board's contract-bar doctrine. The Employer argues that its agreement with the Intervenor to extend the existing contract four months is sufficient to bar the petition. I disagree.

When a petition is filed for a representation election for a group of employees already covered by a collective bargaining agreement, the Board may determine that the existing collective bargaining agreement acts as a bar to the representation election. This is the Board's contract-bar doctrine. The Board has adopted and developed the doctrine with the intention of achieving a balance of two competing statutory policies:

- (1) stability in labor relations, and
- (2) employee free choice to select or change its bargaining representatives.

See *Appalachian Shale Products Co.*, 121 NLRB 1160, 1161 (1958).

In striking the appropriate balance between these two concerns, the Board has developed specific rules as to when a contract-based bar to petitions is appropriate. Generally, where there is already a contract in place, a petition for an election will be processed if it is filed during an "open period" from 60 to 90 days prior to the expiration of the contract. *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000 (1962). Additionally, and relevant in this case, a contract with a fixed term will only act as a bar for a maximum period of three years. *General Cable Corp.*, 139 NLRB 1123 (1962). Therefore, where there is a contract, petitions will be barred unless they are filed during the open period, after the expiration of a contract, or after three years into a fixed-

term contract assuming a new contract is not already in place.

In the current case, the Petitioner filed its petition after three years of the contract between the Employer and the Intervenor, and prior to a new contract taking effect. The Employer and the Intervenor's extension of the contract simply changed their three-year contract into a contract with a duration of three years and four months. Therefore, under *General Cable* the contract bar does not apply.

In asserting that the four-month extension to its contract should bar the Petitioner's petition, the Employer first relies on *Crompton Co., Inc.*, 260 NLRB 417 (1982). The facts in *Crompton* are significantly distinguishable from those of the current case. Consequently, the decision by the Board in *Crompton* was based on different considerations than those in the current case.

In *Crompton*, the employer and incumbent union had a contract that was originally effective from January 10, 1979 until December 1, 1981. The parties then agreed on November 25, 1981 to extend the contract until February 1, 1982. Whereas the contract had originally been for less than three years, with this extension, it then exceeded three years. On December 11, 1981, the petitioning union filed its petition. Though, at this time, the initial contract had already expired and the extension was in effect, it was still less than three years from the effective date of the original contract. Therefore the standard three-year limitation on a contract bar under *General Cable*. was never an issue.

The extension in effect when the petition was filed in *Crompton* was nevertheless insufficient to act as a bar to the petition because it was of an indefinite duration. The Board upheld the Acting Regional Director's decision on those grounds. Although not necessary to its decision, the Board went further to state that, even if the extension in *Crompton* were for a

definite duration, it would still not bar a petition because agreements of less than 90 days would not have a complete open period in which employees could seek removal or replacement of an incumbent bargaining representative. Therefore, the Board reasoned, to allow the short extension to act as a bar would improperly sacrifice employees' choice in representation for what little, if any, industrial stability would result from allowing the short extension to act as a bar.

In *Crompton*, the Board stated that an agreement, including a new contract, for a fixed duration of less than 90 days would not be sufficient to act as a bar. The Employer relies on this now in arguing that its four-month extension to a three-year agreement must therefore be sufficient to act as a bar. However, the Board in *Crompton* was not speaking in the context of a situation where the standard three-year bar was applicable. Certainly the Board's language in *Crompton* was never intended to create the loophole to the three-year limitation currently sought by the Employer.

After arguing *Crompton*, the Employer, in its brief, then argues, presumably in the alternative, that the four-month extension should be treated as a separate individual contract (instead of the final four months of a three year and four month agreement). The Employer relies upon, and then distinguishes, *Madelaine Chocolate Novelties, Inc*, 333 NLRB No. 153 (2001) in support of its contention that the four-month agreement should bar the petition.

In *Madelaine Chocolate*, the Board considered whether a four-year agreement, whose first year simply overlapped and adopted what had been the fourth year of the prior agreement, could act as a bar to a petition. The new agreement in the case contained a reopener clause requiring the parties to later negotiate the economic matters of the second, third, and fourth years of the agreement. The Board found that the agreement was "nothing more than an agreement to begin negotiations in the future" and stated that it would "not allow the parties to transform the

fourth year of their four-year contract—which would not be a bar to the petition—into a one-year bar.” To the degree *Madelaine Chocolate* is applicable in the current case, the fourth-month extension in question clearly will not act as a bar.

The Employer tries to distinguish *Madelaine Chocolate* from the current facts, incorrectly assuming that distinctions between its extension and the contract in *Madelaine Chocolate* will legitimize its extension as a bar. Most of these distinctions are dubious, as they do not affect the policy concerns underlying the application of the contract bar.

For example, the Employer maintains that it and the Intervenor were engaged in substantive negotiations prior to the execution of its extension, whereas in *Madelaine Chocolate* the parties had postponed beginning negotiations for changes in the new agreement. While *Madelaine Chocolate* can be read to require substantive negotiations for an agreement to act as a bar (the Employer cites the case for this proposition on page 9 of its brief), just as in *Madelaine Chocolate*, the parties in the current case failed to have any substantive negotiations over the terms of the four-month agreement at issue. Rather, the parties’ substantive negotiations were in regard to a new future contract, and not the extension of the old contract, which simply continued the preexisting terms.

While the four-month agreement should really be treated as an extension of the previous three-year contract, to the degree it is a separate contract, it is still insufficient to act as a bar under *Madelaine Chocolate*. While distinctions and similarities can of course be found between the facts of *Madelaine Chocolate* and those in the current case, *Madelaine Chocolate*’s relevance is really in seeing how the Board balances the policies underlying the contract bar: industrial stability and employee choice. In *Madelaine Chocolate*, the Board decided that the policy of employees’ choice outweighed any stability brought by an agreement that simply postponed

negotiations in lieu of actually providing employees with a legitimate new contract. Given the similarities between *Madelaine Chocolate* and the current case, the pertinent rule is clear—short of a legitimate new contract, the Board will not allow parties to expand the contract bar beyond its three-year limitation.⁶

The contract bar doctrine seeks to provide the contracting parties a period of stability in their relationship to negotiate new agreements, while still allowing the employees a reasonable opportunity to change or eliminate their bargaining representative if they so choose. In striking a balance between these two competing policies, the Board has limited the barring effect of agreements to three years. This three-year limitation is necessary to protect the freedom of employees to choose their representatives. As it is this three-year limitation that now applies, the Petitioner's petition will not be barred.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the

⁶ Also supporting my conclusion is the Board's decision in *Bridgeport Brass Company*, 110 NRLB 997 (1954). In *Bridgeport*, the Board found an agreement denominated "interim agreement" was not a contract bar. The Board noted the parties' agreement was "merely 'temporary and provisional in character' and [one] which the parties contemplate[d] superseding with a permanent agreement." *Id.* at 998 (footnotes omitted). Similarly here, the document labeled "Notice of Extension or Amendment" (the four-month contract extension), which the Employer asserts is a bar, is merely a temporary stopgap agreement agreed upon by the parties so that they could "...postpone discussion of wages until October 2002" (the Employer's brief at page 4).

United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by (1) **International Union of Industrial and Independent Workers;** (2) **Employee Committee;** (3) **Neither.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to the list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer shall file with the undersigned, **three** copies of an election eligibility list, containing the **full** names (including first and last names) and addresses of all the eligible voters, and upon receipt, the undersigned shall make the list available to all parties to the election. To speed preliminary checking and the voting process itself, it is requested that the names be alphabetized. **In order to be timely filed, such list must be received in the Regional Office, Suite 700, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203 on or before October 28, 2002.**

No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by November 4, 2002.**

Signed at Milwaukee, Wisconsin on this 21st day of October 2002.

/s/Joyce Ann Seiser
Joyce Ann Seiser, Acting Regional Director
National Labor Relations Board
Thirtieth Region
Henry S. Reuss Federal Plaza, Suite 700
310 West Wisconsin Avenue
Milwaukee, Wisconsin 53203

347-4010-2014

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DATE OF MAILING October 21, 2002

AFFIDAVIT OF SERVICE OF DECISION AND DIRECTION OF ELECTION

I certify that on the above date, the above-entitled document was placed in a postage paid regular mail envelope to the addresses named below and deposited in the U.S. Mail:

Lindner & Marsack, S.C.
Mr. Jonathan T. Swain, Esq.
411 East Wisconsin Avenue, Ste. 1000
Milwaukee, WI 53202

Hartford Manufacturing
Mr. Steve Holton
760 Hilldale Drive
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Jolley Walsh Hurley & Raisher, PC.
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Workers
Mr. Mitchel Coneley, Lead Organizer
1725 Windward Concourse
Alpharetta, GA 30005

Employee Committee
c/o 760 Hilldale Drive
Slinger, WI 53086

John J. Toner, Executive Secy. (via e-mail)
National Labor Relations Board
Franklin Court
1099 14th Street, N.W.
Washington, DC 20570

Kathryn E. Fleming

NOTE

There is attached hereto a Waiver (Form NLRB-4480). This waiver is enclosed for the convenience of the parties who wish to waive their right to request a review. Receipt of a waiver from all parties will enable this office to schedule an election at an early date. In the event any party does not wish to waive, and intends to request a review of this decision, they are hereby advised that they must file a request for review with the Board in Washington, DC within 14 calendar days from the issuance of this decision. See 102.67 of the board's Rules and Regulations.

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FORM NLRB-4480 (5/95)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
WAIVER

IN THE MATTER OF **HARTFORD MANUFACTURING
COMPANY, INC.**

(Name of Case)

30-RC-6493

(Number of Case)

**PURSUANT TO SECTION 102.67 OF THE RULES AND REGULATIONS OF THE NATIONAL LABOR
RELATIONS BOARD, THE UNDERSIGNED PARTY WAIVES ITS RIGHT TO REQUEST REVIEW OF
OR FILE EXCEPTIONS TO THE REGIONAL DIRECTOR'S AND/OR HEARING OFFICER'S**

(Title of Document)

IN THE ABOVE-CAPTIONED MATTER ISSUED ON

October 21, 2002

(Date Document Issued)

(Name of Party)

By:

(Name and Title of Representative)

DATE: